

EXHIBIT 1
TO DECLARATION OF KIM J. LANDSMAN

UNITED STATES DISTRICT COURT

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NORTHERN DISTRICT OF NEW YORK

SPERO HARITATOS,

Plaintiff,

-vs-

05-CV-930

HASBRO, INC., and TOYS "R" US - NY LLC,

Defendants.

TELEPHONIC Conference, held at the
offices of WALL, MARJAMA & BILINSKI,
Syracuse, New York, on July 19, 2006,
before MARITA PETRERA, Registered
Professional Reporter and Notary Public
in and for the State of New York.



Dey's Centennial Plaza • 401 S. Salina St., Suite 100 • Syracuse, New York 13202
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APPEARANCES:

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For the Plaintiffs:

WALL, MARJAMA & BILINSKI, LLP
Attorneys at Law
101 South Salina Street
Suite 400
Syracuse, New York 13202
BY: ROBERT E. PURCELL, ESQ.

For the Defendant Hasbro:

PATTERSON, BELKNAP, WEBB & TYLER, LLP
Attorneys at Law
1133 Avenue of the Americas
New York, New York 10036-6710
BY: KIM J. LANDSMAN, ESQ.
MICHAEL SANT' AMBROGIO, ESQ.

For the Defendant Toys "R" Us:

BOND, SCHOENECK & KING
Attorneys at Law
One Lincoln Center
Syracuse, New York 13202
BY: JOHN G. MC GOWAN, ESQ.

*

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MAGISTRATE DI BIANCO: We have a couple of letters pending, the latest one is Mr. Purcell's letter of June 20th, but -- wait a second. We have the latest letter is probably the July 14th letter from you, Mr. Landsman, but there's two other letters, one of June 20th, 2006, and that's Mr. Purcell's, and one of June 26th, a lengthy one from you, Mr. Landsman. What I want to do is take them in sort of reverse order but not strict reverse order.

First issue I want to raise or cover, rather, is this mediation and then the second one will be this disclosure of Attorney Versace, V-E-R-S-A-C-E. That's the Americanized pronunciation. So let's talk briefly about the mediation, Mr. Purcell.

Your letter lays out your reasons for mediation. Is there anything, this is a letter of June 20th, anything you want to add to that, do that right now.

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any kind of mediator's. And he also seems to want to have a mediator try to talk Hasbro into a business deal that its business people are not interested in. So unless we see that there's some reasonable possibility for success of the mediation, and we've asked Mr. Purcell to try to give us some idea of what his client has in mind, we just see this as another diversion and an expensive one at that.

MAGISTRATE DI BIANCO: Okay. Let's break that down. How do you see this as being expensive? I want to review that first.

MS. LANDSMAN: The expense, your Honor, is that presumably this means everybody getting together for at least one day and preparing for that one day, mediation usually requires statements sent to the mediator ahead of time and that's an expense of time. Getting everybody together in one place is an expense of time. It would not just be

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me but presumably have to be a representative of Hasbro.

MAGISTRATE DI BIANCO: Okay. But in terms of the cost of the mediation versus continued litigation, why would you think it's any more expensive than a few more steps in the litigation, or more discovery?

MS. LANDSMAN: Your Honor, I hope we haven't presented ourselves as being opposed to settlement. We always try to settle a case. Our opposition to this mediation is simply that from what we have seen so far and the settlement discussions we've had in the past, we just don't see this as having any likelihood of success and unless Mr. Purcell can give us some idea of where his client is, and he hasn't, there's no reason to change that view. I mean, obviously if we could settle this case on an acceptable basis that would be better than going forward with litigation, but I've just seen no reason

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to believe that that's possible.

MAGISTRATE DI BIANCO: I have ambivalent feelings for you because I understand what you're saying, but it's also my position that mediation, so long as there is good faith efforts by both sides, that a mediation is helpful. I don't know that it would need an entire day and I don't know that it needs a special mediator. I think there are individuals on the Northern District list of approved mediators who could do a credible job, but obviously if you hire a private mediator that will add to the expense. Well, perhaps, perhaps then that puts the ball in Mr. Purcell's court and what I will direct then is that without prejudice to any rights that the plaintiff has, that Mr. Purcell outline in some general terms what his client hopes to get. And obviously any settlement negotiation or offer is without prejudice to anything in the litigation.

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So I'm going to direct that if Mr. Purcell and his client want the mediation, they should send a letter to the defendants and outline with some specificity the terms that they're looking for and if the defendants then think that there's some room to negotiate, then I'll direct that a mediation occur. I certainly am in favor of mediation, but if the parties are worlds apart then it doesn't make a lot of sense. And if it's unclear what one side wants, especially in a case like this where there may be lots of different possibilities, then the mediation may be wasteful. But I am in favor of mediation generally. Anything further on that subject?

MS. LANDSMAN: No, your Honor.

MAGISTRATE DI BIANCO: Then your letter, Mr. Purcell, also talks about this testimony of Mr., I don't know how he pronounced it, I would pronounce it Versace, but for spelling purposes, it's

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1 V-E-R-S-A-C-E, attorney Versace, in
2 Rome. You wanted a ruling from me that
3 you are not precluded from utilizing
4 him. That's something that has to go to
5 the trial judge. If this case comes to
6 trial, then the defendant can make a
7 motion to preclude and you can oppose
8 that. Judge Hurd, it is Judge Hurd,
9 isn't it?

10
11 MR. MC GOWAN: It is, your Honor.

12 MAGISTRATE DI BIANCO: Then Judge
13 Hurd can rule on that. As a matter of
14 protocol, I don't make rulings that bind
15 the trial judge; and even if I did make
16 a ruling, I would make it clear that
17 it's not binding because as things
18 unfold in a trial, there may be reasons
19 to allow late witnesses or not allow
20 them. So that's, I'm going to defer
21 that for any trial.

22 The other matters for the
23 conference are in your letter,
24 Mr. Landsman, of June 26th, 2006,
25 six-page letter, and at the end you're

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1
2 looking for some discovery. Let me hear
3 briefly what's going on in case there
4 have been any changes since then. That
5 letter is several weeks old. What's the
6 status now of the discovery that you're
7 seeking? Is it still outstanding?

8 MS. LANDSMAN: Your Honor, again,
9 Kim Landsman. We believe it is still
10 outstanding. Mr. Purcell has been
11 dribbling in some documents to us over
12 the last week or so. We got some
13 documents on July 7th and July 12th, but
14 I do not believe that they comply with
15 all of our requests and Mr. Purcell has
16 not made any representation that they
17 do.

18 MAGISTRATE DI BIANCO: Okay,
19 Mr. Purcell, what's your response to
20 that please?

21 MR. PURCELL: First, your Honor,
22 frankly I wasn't prepared to address
23 that letter during the telephone
24 conference today. I inferred from your
25 order that we were only going to discuss

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1 the request for the extension of the
2 expert witness report dates and the
3 discovery deadline, generally. But if
4 you permit me an opportunity to provide
5 a written response to the June 26th
6 letter, I think that may clarify our
7 position. And then if Mr. Landsman
8 still believes that there's a need to
9 have you intervene, then I guess we, you
10 know, take it up with you at that time.
11 I'd ask the opportunity to provide a
12 written response to that.
13

14 MAGISTRATE DI BIANCO: And I
15 forgot, frankly, slipped my mind, the
16 expert report dates. Let's talk about
17 that and put this outstanding discovery
18 off for a few minutes. What about, just
19 so many letters in this case, I'm losing
20 track of issues. They seem to be
21 popping up daily. What's this, what's
22 the issue with the expert report date?
23 You generally want an expansion of that
24 time, Mr. Purcell?

25 MR. PURCELL: Yes. Your Honor,

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2 this is the first request for extension
3 of time by any party, and as you can
4 well appreciate, factual discovery is
5 continuing. We've had trouble setting
6 up depositions of the defendants'
7 witnesses. We just took two days of
8 depositions of Toys "R" Us people last
9 week, I believe. We are scheduled to
10 take depositions of Hasbro's people in
11 mid-August. We continue to get
12 documents from Toys "R" Us, especially,
13 after even the July 1st date when our
14 plaintiff's expert report was due under
15 the current scheduling order, and it
16 just makes sense to have the experts
17 aware of what the facts are before
18 rendering opinions. Otherwise we are in
19 a position where the experts are going
20 to be deposed and they're going to be
21 exposed, you weren't aware of this, you
22 weren't aware of that, there will be
23 motions to revise expert reports based
24 on newly discovered information and then
25 opposition to that and then request to

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1
2 redepose experts based upon the revised
3 opinion and information, so forth. I'd
4 also like to emphasize, your Honor, that
5 when the parties initially proposed a
6 case management plan, the parties
7 proposed that there first be a factual
8 discovery cut-off date and then there be
9 a period for the submission of expert
10 reports and expert discovery.

11 The scheduling order issued by Your
12 Honor did not have any sort of
13 bifurcation of discovery, but the
14 parties themselves had urged let's
15 complete discovery first and then get
16 into expert reports.

17 It's obvious in this case that the
18 factual discovery is far from complete
19 and I think it would be just an
20 expensive mess to try to prepare expert
21 reports at this juncture. That's why
22 I've asked for the extension of time. I
23 don't think it would unduly delay
24 things. I am as interested in getting
25 to trial in this as Mr. Landsman and

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1
2 Mr. McGowan, but I think that the best
3 way to proceed would be to just have an
4 extension of time to allow us to get
5 this factual discovery relatively under
6 our belt and relatively complete before
7 getting experts involved.

8 MAGISTRATE DI BIANCO: Let me hear
9 Mr. Landsman and Mr. McGowan's response
10 to that, please.

11 MS. LANDSMAN: This is Kim
12 Landsman, again. What I still haven't
13 heard from Mr. Purcell is any idea at
14 all of what this expert would be, and it
15 just seems to me like he's asking for a
16 delay for the sake of delay. I cannot
17 imagine what Hasbro's witnesses are
18 going to say that would influence an
19 expert here because the only expert I
20 can imagine Mr. Purcell trying to use is
21 a survey expert and I haven't heard that
22 he has any concept of doing a survey.
23 There would be no reason to delay a
24 survey until factual discovery is over.
25 If there is some other expert that would

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2 depend on certain deposition testimony,
3 I think that before Mr. Purcell asks for
4 an extension, he should at least tell us
5 what that is.

6 MAGISTRATE DI BIANCO: Okay. Let
7 me go back to Mr. Purcell then. What's
8 the nature of this expert testimony?

9 MR. PURCELL: Well, your Honor,
10 first of all I take issue with, you
11 know, the suggestion that I have to
12 reveal the proposed testimony of my
13 expert at this particular point in time.
14 You may recall that in connection with a
15 contest over the protective order, I
16 wanted to have the undertaking signed by
17 consulting and testifying experts
18 revealed to the adversary before the
19 experts could see documents. That was
20 resisted by my adversary so that
21 consulting experts are still, whose
22 identities are still kept secret. If
23 they have been testifying experts, of
24 course they are revealed and undertaking
25 is revealed and so forth. So my

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adversaries wanted to have the
consulting experts concealed and now
this angle, telling us all about the --

MAGISTRATE DI BIANCO: No, no, the
question is really what type of expert
it is. I'm not asking for his
testimony. Is it an expert in
engineering, is it an expert in --

MR. PURCELL: It's an expert in
trademark law and procedure, US
trademark law and procedure, and I will
firmly state to the court that I have
received an undertaking from the expert
and have paid retainer to the expert and
the expert has been provided with
several documents we received to date in
the lawsuit. So this is not just a
hypothetical exercise, Your Honor. I
have already undertaken those steps to
retain an expert who is in fact
retained, conflicts have been checked
and so forth. So contrary to
Mr. Landsman's suspicion, it is again
not a hypothetical.

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2 MAGISTRATE DI BIANCO: Okay. Let
3 me go back to Mr. Landsman then. Having
4 heard that, this expert will be in the
5 field of trademark law and procedure,
6 you folks still -- I guess I didn't ask
7 Mr. McGowan's opinion. Let me hear from
8 Mr. McGowan.

9 MR. MC GOWAN: Your Honor, I really
10 don't have anything to add. I think Kim
11 Landsman has said it well. I understand
12 Mr. Purcell's response to this.

13 MAGISTRATE DI BIANCO: Okay.
14 Mr. Landsman, any further response then?

15 MR. LANDSMAN: Yes, Your Honor.
16 Two things. First of all, I can't
17 imagine the court accepting an expert
18 testimony on what the law is. That's
19 for the court to decide. That kind of
20 testimony has been thrown out for
21 decades. I mean it used to be in patent
22 cases that judges occasionally would do
23 that and they don't even do that in
24 patent cases anymore. So this is not an
25 expert that the court is -- I think,

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1 should take any cognizance on. But
2 secondly, to the issue of the deadline,
3 you certainly don't need testimony from
4 Hasbro's business people or licensing
5 negotiators to have an expert testify on
6 trademark law. There's just -- there's
7 no excuse for having this expert and
8 there's no excuse for delaying
9 disclosure of the expert if he has one.

11 MAGISTRATE DI BIANCO: I think that
12 for the time being I'm going to defer,
13 defer that question. I may want to look
14 at the history of this case. I'm
15 somewhat inclined to agree with
16 defendants. Whether the expert is
17 allowed of course is for the trial judge
18 and I shouldn't be usurping trial
19 judge's function. But it does seem to
20 me that if it's an expert in trademark
21 procedure, that the using the testimony
22 from business people or other marketing
23 people or anybody in the company that
24 had nothing to do with the trademark
25 would be, would be irrelevant and the

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2 experts don't need that. I can
3 understand some reasonable extension,
4 but I certainly would not extend it
5 beyond the close of all discovery since
6 discovery seems to be never ending at
7 this point. All right.

8 I think that's all we'll cover.
9 Mr. Purcell, Mr. Landsman laid out in
10 his letter of June 26th, 2006, some very
11 clear requests on pages 5 and 6 for
12 discovery. I've taken a look at
13 Mr. Landsman's letter, it makes a lot of
14 sense in terms of the relevance of these
15 documents, and I'm prepared to order
16 those, the production of those documents
17 within weeks unless you can show to me
18 the reasons and convince me of the
19 reasons not to have those produced. So
20 I will allow you one opportunity to
21 respond to Mr. Landsman's letter of
22 June 26th. How much time do you want to
23 do that?

24 MR. PURCELL: I could have
25 something by the end of this week, maybe

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2 Monday, Monday, would that be okay?

3 MAGISTRATE DI BIANCO: Fine.

4 Today's Wednesday, is it. Next

5 Wednesday is fine -- next Tuesday is

6 fine. And then Mr. Landsman, if you

7 want a very brief reply, I'm going to

8 have Mr. Purcell's response of two

9 pages, you can have that by the

10 following, by Friday of next week.

11 You'll have Mr. Purcell's response by

12 close of business Tuesday, and then I

13 will rule on that.

14 MS. LANDSMAN: Thank you, your
15 Honor.

16 MAGISTRATE DI BIANCO: Anything
17 further that involves scheduling or
18 anything like that?

19 MR. PURCELL: Yes, your Honor.
20 This is Bob Purcell. I'm asking for
21 clarification with regard to your ruling
22 on the request to extend the due dates
23 for the expert witness reports. This is
24 a very critical matter as far as my case
25 is concerned, and if you're denying my

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1 motion, I'd like to know that so I can
2 at least have the opportunity to appeal
3 within 10 days to the District Court
4 judge, or at least ask, maybe put my
5 thoughts about why the expert needs
6 stuff from the business people to you
7 within a week or something like that.
8 You mentioned that you would be
9 entertaining reasonable extension
10 through the end of discovery cut-off
11 date which I think is September 29th in
12 this case, so I guess I'm a little
13 uncertain as to what your ruling was in
14 regard to my request.
15

16 MAGISTRATE DI BIANCO: The ruling
17 was I'm reserving decision on that and I
18 will probably, when I issue the decision
19 on the discovery requested by
20 Mr. Landsman, include that in that
21 order.

22 MR. PURCELL: Would you entertain
23 further argument in the form of a letter
24 to you on that point as to why I believe
25 that the trademark law and procedure

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expert would reasonably need some of the
evidence that's been only produced
relatively recently?

MAGISTRATE DI BIANCO: Yes. If
it's short. No more than three pages.
And Mr. Landsman, you can respond no
more than three pages but that has to be
done within the same time frame as the
submissions on the discovery requested
by Mr. Landsman. All right, anything
further? Thank you all.

MR. PURCELL: Thank you, your
Honor.

* * *

REPORTER'S CERTIFICATE

I, MARITA PETRERA, Court Reporter and
Notary Public, certify:

That the foregoing proceedings were taken
before me at the time and place therein set forth, at
which time the witness was put under oath by me;

That the testimony of the witness and all
objections made at the time of the examination were
recorded stenographically by me and were thereafter
transcribed;

That the foregoing is a true and correct
transcript of my shorthand notes so taken;

I further certify that I am not a relative or
employee of any attorney or of any of the parties nor
financially interested in the action.

A handwritten signature in cursive script, reading "Marita Petrerera", is written over a horizontal line.

MARITA PETRERA, RPR, CLR

Notary Public

EXHIBIT 2
TO DECLARATION OF KIM J. LANDSMAN

Patterson Belknap Webb & Tyler LLP

1133 Avenue of the Americas New York, NY 10036-6710 212.336.2000 fax 212.336.2222 www.pbwt.com

July 14, 2006

Kim J. Landsman
(212) 336-2980
Direct Fax (212) 336-2985
kjlandsman@pbwt.com

Filed Electronically

Honorable Gustave J. DiBianco
United States Magistrate Judge
United States Courthouse
PO Box 7396
100 South Clinton Street
Syracuse, New York 13261

Re: Haritatos v. Hasbro, Inc. and Toy 'R Us-NY LLC,
Civil Action 05-CV-930

Dear Judge DiBianco:

We are counsel for defendant Hasbro, Inc. ("Hasbro") and write in response to another letter from Mr. Purcell to the Court. Mr. Purcell has asked the Court to extend by three months the deadline for submitting expert reports and the close of all discovery.

In response to Mr. Purcell's request for our consent to this extension, we asked him to explain why his client was unable to name an expert and produce an expert report within the existing deadlines – that is, what type of expert he has in mind and why the opinion of such an expert would depend on Hasbro's deposition testimony. *See* Exhibit 1 hereto. Mr. Purcell has not, however, provided any such information either to us or to the Court.

The only expert that we can conceive of Plaintiff retaining in the context of this trademark litigation would be a survey expert who would design a consumer survey to test whether there is any likelihood of confusion between Mr. Haritatos' store in Rome and use of Hasbro's CANDY LAND® mark and visual graphics in connection with the candy department of Toys 'R Us's Times Square store. We see no reason why such an expert needs to await the testimony of defendants' witnesses. Moreover, Mr. Haritatos himself testified that he has no reason to believe that there has been any such confusion. *See* Exhibit 2 hereto. Therefore, it seems unlikely that Mr. Purcell intends to proceed with such a survey.

Honorable Gustave J. DiBianco
July 14, 2006
Page 2

Accordingly, we respectfully request that the Court deny Plaintiff's motion to extend the discovery deadlines.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "K J Landsman", with a long horizontal flourish extending to the right.

Kim J. Landsman

cc: Robert E. Purcell, Esq. (e-mail)
John G. McGowan, Esq. (e-mail)

Exhibit 1

Patterson Belknap Webb & Tyler LLP

1133 Avenue of the Americas New York, NY 10036-6710 212.336.2000 fax 212.336.2222 www.pbwt.com

June 26, 2006

Michael D. Sant'Ambrogio
(212) 336-2436
Direct Fax (212) 336-7948
mdsantambrogio@pbwt.com

By E-Mail and Mail Confirmation

Robert E. Purcell, Esq.
Wall Marjama & Bilinski LLP
101 South Salina Street, Suite 400
Syracuse, NY 13202

Re: Haritatos v. Hasbro

Dear Bob:

I am writing in response to several issues raised in your June 15 and June 21, 2006 emails to Kim Landsman.

Depositions of Hasbro's Witnesses

During our telephone conversation on June 14, 2006, we asked you how much time you wanted with each witness and you stated that you intend to take five hours each with Ritson-Parsons and Klusaritz and six hours with Dubosky. We responded that that seemed excessive. After all, you originally noticed Ritson-Parsons for no more than two hours, Klusaritz for a deposition beginning at 4:00 p.m., and Dubosky for a four hour deposition. Nevertheless, we agreed to accommodate your request.

Your more recent request for seven hours with each witness is clearly excessive and designed to harass Hasbro and its witnesses. The witnesses you have chosen to depose are all busy executives and at least one has already had to rearrange his business plans, at some inconvenience to the company, in order to accommodate your request that we produce the witnesses on the three consecutive days that you requested in August.

We will make the witnesses available at the times and dates previously stated and for the time you requested on June 14, although we continue to believe that even that is excessive and far more time than you will be able to put to productive use.

Candyland.com

The lawsuit in Seattle concerning the "candyland.com" domain name is not relevant.

Robert E. Purcell
June 26, 2006
Page 2

Expert Reports

To evaluate your request for any extension of time to serve expert reports we would need to know what expert you have in mind and why you do not believe you can serve their reports within the time originally allotted.

Document Redactions

We will provide you with unredacted copies of the document bearing production numbers HG000450 through HG000461, which potentially relates to Candy Land® among eight different Hasbro properties. In addition, we will un-redact the financial information contained in HG000447, HG000448, HG000830, HG000833-HG000835, and HG001532 that relates to the Candy Land® brand.

The rest of the redacted information contained in the documents cited in your June 15, 2006, email to Kim Landsman are either not responsive to your document requests or they are protected by the attorney-client privilege. The vast majority of this material concerns Hasbro properties that are not at issue in this case (*i.e.*, not Hasbro's Candy Land® brand). In addition, HG000421, HG000424, HG000437, HG000889, HG0001341 contain material protected by the attorney-client privilege. Hasbro will include these redactions on its privilege log and suggests that the parties exchange their privilege logs by July 10, 2006.

Sincerely yours,

A handwritten signature in black ink, appearing to read "M. Sant'Ambrogio", written in a cursive style.

Michael D. Sant'Ambrogio

cc: John G. McGowan, Esq. (by e-mail)

Exhibit 2

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

* * * * *

SPERO HARITATOS,

Plaintiff,

-vs-

Index No.:
05 CIV 930 (DNH/GJD)

HASBRO, INC. and
TOYS "R" US-NY LLC,

Defendant.

* * * * *

Examination Before Trial of
SPERO T. HARITATOS, Plaintiff, held at
the offices of BOND, SCHOENECK & KING,
PLLC, Syracuse, New York, on May 17,
2006, before MELISSA A. LANNING, Court
Reporter and Notary Public in and for
the State of New York.

ORIGINAL



MELISSA A. LANNING, CSR

239 Northland Drive
Central Square, New York 13036
(315) 676-2584

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APPEARANCES:

For the Plaintiff:

WALL, MARJAMA & BILINSKI, LLP
Attorneys at Law
101 South Salina Street, Suite 400
Syracuse, New York 13202
BY: ROBERT E. PURCELL, ESQ.

For the Defendant, Hasbro, Inc.:

PATTERSON, BELKNAP, WEBB & TYLER,
LLP
Attorneys at Law
1133 Avenue of the Americas
New York, New York 10036-6710
BY: MICHAEL D. SANT'AMBROGIO, ESQ.

For the Defendant, Toys "R" Us - NY, LLC:

BOND, SCHOENECK & KING, PLLC
Attorneys at Law
One Lincoln Center
Syracuse, New York 13202
BY: JOHN G. MCGOWAN, ESQ.

SPERO T. HARITATOS

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and Hasbro?

A. No.

Q. Okay. And you're not aware of anybody who was confused about the origins of the goods that Toys "R" Us was selling in their candy department, right?

A. No.

Q. Okay. You don't have any reason to believe that anyone would have been confused by the goods that are being -- strike that.

You have no reason to believe that anyone would have been confused about the origins of the goods that were being sold in the Toys "R" Us candy department since 2001?

A. I can't say that. I don't know.

Q. What I'm asking you, sir, is do you have any reason to believe that anyone was confused about the origin of the goods sold in Toys "R" Us candy department since 2001?

A. Well, I can't say that.

Q. Do you have a reason to believe that they would have been confused?

A. I don't.

Q. It's a "yes" or "no" question.

SPERO T. HARITATOS

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A. No.

Q. No. Do you have any reason to believe that any of the visitors to the Toys "R" Us Times Square store are aware of your business?

A. I don't know.

Q. But you have no reason to believe that they are aware of your business?

A. I don't know that.

Q. Do you have any reason to believe that they are aware of your business; yes or no?

A. I have no reason not to.

Q. Okay. Do you advertise in New York City?

A. No, I don't.

Q. Okay. So how would they know about your business?

A. That is if they came from Rome.

Q. So if they came from Rome they might know about your business?

A. Yeah, Rome, Utica, Syracuse.

Q. Any other reason?

A. No.

Q. And you testified to Mr. McGowan that you have not lost any sales as a result of Toys "R" Us candy department; is that correct?

SPERO T. HARITATOS

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1 A. That I know of.

2 Q. You're not aware of it?

3 A. I'm not aware of any.

4 Q. Of any sales that you've lost as a result of
5 candy sold in the Toys "R" Us candy department?
6

7 A. Correct.

8 Q. Okay. And do you have any reason to believe
9 that a consumer who walked into Toys "R" Us candy
10 department would confuse -- I'm sorry.

11 Actually, let me direct your attention to
12 Exhibit 22; that's the Candyland mark. Do you have any
13 reason to believe that a consumer who walked into the
14 Toys "R" Us candy department would believe that this
15 Candyland mark, Hasbro's Candyland mark, was associated
16 with your turkey joints in any way?

17 A. Well, they could if they're from our area.
18 It's possible. It's very possible.

19 Q. Why?

20 A. Because they know our Candyland.

21 Q. But you've said there's no similarity
22 between the marks?

23 A. I've said there's no similarity. You're
24 asking if a customer would. So you're asking me my
25 opinion on it, and I'm telling you.

EXHIBIT 3
TO DECLARATION OF KIM J. LANDSMAN

Patterson Belknap Webb & Tyler LLP

1133 Avenue of the Americas New York, NY 10036-6710 212.336.2000 fax 212.336.2222 www.pbwt.com

July 28, 2006

Kim J. Landsman
(212) 336-2980
Direct Fax (212) 336-2985
kjlandsman@pbwt.com

Filed Electronically

Honorable Gustave J. DiBianco
United States Magistrate Judge
United States Courthouse
PO Box 7396
100 South Clinton Street
Syracuse, New York 13261

**Re: Haritatos v. Hasbro, Inc. and Toy 'R Us-NY LLC,
Civil Action 05-CV-930**

Dear Judge DiBianco:

We are counsel for defendant Hasbro, Inc. ("Hasbro") and write in response to Mr. Purcell's July 26, 2006, letter to the Court requesting to extend the discovery deadlines, including the deadline for disclosing expert witnesses. Plaintiff seeks an extension of the deadlines to disclose an expert on U.S. trademark law and procedure on the grounds that he could not disclose his expert prior to the testimony of Defendants' witnesses. But Plaintiff has failed to explain why his expert needs the testimony of Defendants' business people to "assist the trier of fact to understand the evidence or to determine a fact in issue." Fed. R. Evid. 702.

Plaintiff appears to believe that he can present expert testimony as to trademark law and procedure, but the courts in this circuit have not allowed such testimony. "[T]he expert testimony of an attorney as to an ultimate issue of domestic law or as to the legal significance of facts is inadmissible." Motown Prod., Inc. v. Cacom, Inc., 668 F. Supp. 285, 288-89 (S.D.N.Y. 1987), rev'd on other grounds, 849 F.2d 78 (2d Cir. 1988) (excluding affidavit of trademark lawyer opining that trademark was "suggestive"). "It is not for witnesses to instruct the jury as to applicable principles of law, but for the judge." U.S. v. Scop, 846 F.2d 135, 140 (2d Cir. 1988) (citing Marx & Co., Inc. v. Diners' Club Inc., 550 F.2d 505, 509-10 (2d Cir. 1977)). "[T]he Second Circuit applies strict standards to the admissibility of expert opinions, disagreeing with other circuits when necessary[.]" Kidder, Peabody & Co., Inc. v. IAG Int'l Acceptance Group, 14 F. Supp. 2d 391, 404 (S.D.N.Y. 1998).

Plaintiff cites a single case from a district court in Illinois for the proposition that it is "standard practice" for parties to offer expert testimony on trademark law and procedures, but the case actually refutes his position. In Sam's Wines & Liquors Inc. v. Wal-Mart Stores Inc., 32 U.S.P.Q.2d 1906, 1912 (N.D. Ill. 1994), plaintiff offered an expert to testify concerning

Honorable Gustave J. DiBianco
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Page 2

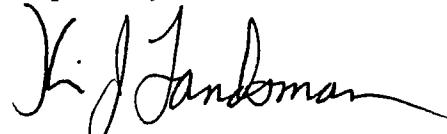
"the procedures, standards, customs, usage, and practices in the United States Patent & Trademark Office ("PTO") and among in-house trademark counsel and the trademark bar." Id. The court allowed testimony on "the technical aspects of applying for and obtaining a federal trademark registration" and "the similarities of the parties' respective marks" but precluded the expert from testifying "on the legal standards applicable to this case or the results of her legal research as they apply to the ultimate issue of trademark infringement or likelihood of confusion." Id. at 1913. The procedures of the PTO are not at issue in this case and Plaintiff admits there are no similarities between the marks at issue as the parties use them, see Exhibit 1 hereto, so the case is unhelpful to him. Moreover, the testimony of Hasbro's business people is irrelevant to any such opinion.

Mr. Purcell's letter lists several proposed subjects of testimony for his expert, but the only subjects cited in Mr. Purcell's letter that might relate in any way to Hasbro's business people are "Hasbro's [alleged] efforts to acquire Plaintiff's rights in his registered trademark and whether Defendant Hasbro's activities in licensing its allegedly infringing trademark to Toys 'R Us and others were willful and in bad faith." That states the conclusion he expects from his expert but does not explain why his expert needs the testimony of Hasbro's business people. In sum, Mr. Purcell still has not explained why his client was unable to name an expert and produce an expert report within the existing deadlines.

Plaintiff has repeatedly delayed the progress of this case, first by obstructing the entry of a protective order, then by waiting until late in discovery to notice the depositions of Defendants' employees. He should not now be allowed to further delay the case when he cannot articulate a proper subject for his proposed expert's testimony or why his expert needs the testimony of Hasbro's business people to offer an expert opinion. Merely stating that his "expert's testimony will be intertwined with the unique facts of this case" is simply conclusory and unhelpful.

Accordingly, we respectfully request that the Court deny Plaintiff's motion to extend the discovery deadlines.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kim J. Landsman", with a stylized, flowing script.

Kim J. Landsman

cc: Robert E. Purcell, Esq. (e-mail)
John G. McGowan, Esq. (e-mail)

Exhibit 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

* * * * *

SPERO HARITATOS,

Plaintiff,

-vs-

Index No.:

05 CIV 930 (DNH/GJD)

HASBRO, INC. and

TOYS "R" US-NY LLC,

Defendant.

* * * * *

Examination Before Trial of
SPERO T. HARITATOS, Plaintiff, held at
the offices of BOND, SCHOENECK & KING,
PLLC, Syracuse, New York, on May 17,
2006, before MELISSA A. LANNING, Court
Reporter and Notary Public in and for
the State of New York.

<p style="text-align: right;">Page 310</p> <p>1 SPERO T. HARITATOS 310</p> <p>2 happens to every witness, and it happens to a lot of</p> <p>3 lawyers, too.</p> <p>4 All right. Let's take a look at the jar for</p> <p>5 your turkey joints.</p> <p>6 A. All right.</p> <p>7 Q. Are there any similarities between the</p> <p>8 turkey joints mark and Hasbro's Candyland mark?</p> <p>9 A. No, I don't believe so.</p> <p>10 Q. Okay. They're not the same color, correct?</p> <p>11 A. Correct.</p> <p>12 Q. In fact, they're written in different</p> <p>13 scripts, correct?</p> <p>14 A. I guess so.</p> <p>15 Q. And Hasbro uses two words in it's Candyland</p> <p>16 name and you use one word in your Candyland name in</p> <p>17 your turkey joints mark, correct?</p> <p>18 A. Correct.</p> <p>19 Q. So there's a different number of words</p> <p>20 between the two marks?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. The overall design of the two marks</p> <p>23 is different, correct?</p> <p>24 A. Correct.</p> <p>25 Q. And the overall impression created by the</p>	<p style="text-align: right;">Page 312</p> <p>1 SPERO T. HARITATOS 312</p> <p>2 Q. They said that Hasbro's Candyland board game</p> <p>3 mark looked similar to your turkey joints mark?</p> <p>4 A. The Candyland mark, the original Candyland.</p> <p>5 It still looked like Candyland.</p> <p>6 Q. Do you think that there's any similarity?</p> <p>7 You just testified that there is no similarity between</p> <p>8 the two marks, correct?</p> <p>9 A. Yes. I don't see it.</p> <p>10 Q. Okay. And has anyone ever inquired about a</p> <p>11 relationship between your business and Toys "R" Us?</p> <p>12 A. A relationship?</p> <p>13 Q. (Nodding.)</p> <p>14 A. I don't believe so.</p> <p>15 Q. Has anyone ever inquired about any</p> <p>16 association between you and Toys "R" Us?</p> <p>17 A. I don't believe so.</p> <p>18 Q. Okay. And has anyone ever inquired about a</p> <p>19 relationship between you and Hasbro?</p> <p>20 A. Except for -- no. Except for McLaughlin at</p> <p>21 the time.</p> <p>22 Q. Hasbro's --</p> <p>23 A. Hasbro's McLaughlin.</p> <p>24 Q. Aside from some person from Hasbro, has</p> <p>25 anyone ever inquired about a relationship between you</p>
<p style="text-align: right;">Page 311</p> <p>1 SPERO T. HARITATOS 311</p> <p>2 two marks is different, correct?</p> <p>3 A. Correct.</p> <p>4 Q. Okay. Has anyone ever told you that</p> <p>5 Hasbro's Candyland mark is similar in the way it looks</p> <p>6 to your turkey joints mark?</p> <p>7 A. I remember a long time ago someone mentioned</p> <p>8 it years ago.</p> <p>9 Q. They mentioned what?</p> <p>10 A. That it's very -- it's similar to ours.</p> <p>11 Q. When did this happen?</p> <p>12 A. Oh, a long time ago.</p> <p>13 Q. Ten years ago?</p> <p>14 A. Yeah. I don't know. I don't remember.</p> <p>15 Q. More than ten years, or less than ten</p> <p>16 years?</p> <p>17 A. It could have been more than ten years.</p> <p>18 Q. And who was this person?</p> <p>19 A. I don't know. Just a customer brought it</p> <p>20 up.</p> <p>21 Q. Somebody who had walked into your store?</p> <p>22 A. Yeah, I believe so.</p> <p>23 Q. And what did they say?</p> <p>24 A. Nothing. That it looked very similar to</p> <p>25 ours.</p>	<p style="text-align: right;">Page 313</p> <p>1 SPERO T. HARITATOS 313</p> <p>2 and Hasbro?</p> <p>3 A. No.</p> <p>4 Q. Okay. And you're not aware of anybody who</p> <p>5 was confused about the origins of the goods that</p> <p>6 Toys "R" Us was selling in their candy department,</p> <p>7 right?</p> <p>8 A. No.</p> <p>9 Q. Okay. You don't have any reason to believe</p> <p>10 that anyone would have been confused by the goods that</p> <p>11 are being -- strike that.</p> <p>12 You have no reason to believe that anyone</p> <p>13 would have been confused about the origins of the goods</p> <p>14 that were being sold in the Toys "R" Us candy</p> <p>15 department since 2001?</p> <p>16 A. I can't say that. I don't know.</p> <p>17 Q. What I'm asking you, sir, is do you have any</p> <p>18 reason to believe that anyone was confused about the</p> <p>19 origin of the goods sold in Toys "R" Us candy</p> <p>20 department since 2001?</p> <p>21 A. Well, I can't say that.</p> <p>22 Q. Do you have a reason to believe that they</p> <p>23 would have been confused?</p> <p>24 A. I don't.</p> <p>25 Q. It's a "yes" or "no" question.</p>